



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Memorial Compounding Pharmacy

Respondent Name

XL Specialty Insurance Company

MFDR Tracking Number

M4-17-0657-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

November 7, 2016

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Memorial Compounding Pharmacy has made numerous attempts to have the attached bills processed. Broadspire has yet to approve or deny our bills. Broadspire has not sent Memorial Compounding Pharmacy any type of correspondence, EOB, or payments on any of the attached bills."

Amount in Dispute: \$3,655.98

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Payment has been disputed as there is no preauthorization approval for the medication."

Response Submitted by: Broadspire

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 29 – May 30, 2016	Pharmacy Services - Compounds	\$3,655.98	\$1,827.99

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
3. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
4. 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.
5. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 39 – Denied – Medication Not Authorized

Issues

1. What are the services in dispute?
2. Did XL Specialty Insurance Company (XL Specialty) pay, reduce or deny the disputed compound dispensed on date of service January 29, 2016, not later than the 45th day after receiving the pharmacy bill?
3. Is XL Specialty's denial of payment for the disputed compounds supported?
4. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the disputed compounds?

Findings

1. Memorial is seeking reimbursement for the following services:

- Baclofen 100% bulk powder, 60 gm, dispensed on January 29, 2016; March 16, 2016; and March 31, 2016
- Compound containing Versapro Cream, Ethoxy Diglycol, Amitriptyline HCl, Bupivacaine HCl, Gabapentin USP, Amantadine HCl, and Baclofen, with a compounding fee, dispensed on April 15, 2016; April 29, 2016; and May 30, 2016

These are the services reviewed in this dispute.

2. Memorial contends that Broadspire, an agent of XL Specialty, "has yet to approve or deny our bills. Broadspire has not sent Memorial Compounding Pharmacy any type of correspondence, EOB, or payments on any of the attached bills."

According to Texas Labor Code Sec. 408.027(b) XL Specialty was required to pay, reduce or deny the disputed services not later than the 45th day after it received the medical bill from Memorial. Corresponding 28 Texas Administrative Code §133.240 also required XL Specialty to take final action by issuing an explanation of benefits not later than the statutorily-required 45th day.

Although there is evidence that XL Specialty received a pharmacy bill for the compound dispensed on January 29, 2016, it failed to timely take the following actions:

Rule §133.240(a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill."

Rule §133.240(e) The insurance carrier **shall send the explanation of benefits** in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:

- (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

The division concludes that XL Specialty's failure to timely issue an appropriate explanation of benefits for date of service January 29, 2016, constitutes a new defense pursuant to 28 Texas Administrative Code §133.307(d)(2)(F). Absent any evidence to the contrary, the division finds that the compound in question is eligible for review.

3. XL Specialty denied the disputed compounds with claim adjustment reason code 39 – "Denied – Medication Not Authorized."

28 Texas Administrative Code §134.530(b)(2) states that preauthorization is **only** required for:

- drugs identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates;
- any compound that contains a drug identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates; and

- any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

The division finds that the compound in question does not include a drug identified with a status of “N” in the current edition of the ODG, *Appendix A*. XL Specialty failed to articulate any arguments to support its denial for preauthorization. Therefore, the division concludes that the compounds in question did not require preauthorization and XL Specialty’s denial of payment for this reason is not supported. Therefore, the disputed compounds will be reviewed for reimbursement.

4. 28 Texas Administrative Code §134.502(d)(2) requires that compound drugs “be billed by listing each drug included in the compound and calculating the charge for each drug separately.” The division finds that the submitted documentation supports that Memorial did not bill the compound drugs dispensed on January 29, 2016; March 16, 2016; and March 31, 2016, in accordance with 28 Texas Administrative Code §134.502(d)(2). Therefore, these dates of service are not eligible for reimbursement.

28 Texas Administrative Code §134.503 applies to the compounds in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
 - (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
 - (A) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
 - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider; or
 - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The disputed compounds dispensed on April 15, 2016; April 29, 2016; and May 30, 2016, were billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2). Each ingredient is listed below with its corresponding reimbursement amount as applicable.

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Compound Fee	NA	\$15.00	1	\$15.00	\$15.00	\$15.00
Versapro Cream	38779252903 Brand Name	\$3.20	40.8 gm	\$142.31	\$102.00	\$102.00
Ethoxy Diglycol	38779190301 Generic	\$0.342	4.2 ml	\$1.80	\$1.44	\$1.44
Amitriptyline HCl	38779018904 Generic	\$18.24	1.8 gm	\$41.04	\$31.63	\$31.63
Bupivacaine HCl	38779052405 Generic	\$45.60	1.2 gm	\$68.40	\$48.02	\$48.02
Gabapentin USP	38779246109 Generic	\$59.85	3.6 gm	\$269.33	\$188.10	\$188.10

Amantadine HCl	38779041105 Generic	\$24.225	3.0 gm	\$90.84	\$38.46	\$38.46
Baclofen	38779038809 Generic	\$35.63	5.4 gm	\$240.50	\$184.68	\$184.68
					Total	\$609.33
					x 3	\$ 1,827.99

The total reimbursement is therefore \$1,827.99. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$1,827.99.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$1,827.99, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Signature	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Laurie Garnes Medical Fee Dispute Resolution Officer	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> December 14, 2017 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.